

Online Reference: FLWSUPP 3211OWEN

Torts -- Municipal corporations -- Trip and fall on sidewalk -- Open and obvious condition -- City was entitled to summary judgment where small height difference between two sidewalk panels that tripped plaintiff was open and obvious and was not dangerous condition as matter of law

WANDA OWENS, Plaintiff, v. CITY OF GAINESVILLE, Defendant. Circuit Court, 8th Judicial Circuit in and for Alachua County. Case No. 01-23-CA-2260. Division K. November 12, 2024. Gloria R. Walker, Judge. Counsel: Dan Weisman, Senior Assistant City Attorney, City of Gainesville, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION

FOR SUMMARY JUDGMENT

AND FINAL JUDGMENT

This cause came to be heard on October 29, 2024, upon Defendants' Motion for Summary Judgment. The Court having reviewed the pleadings, heard argument from counsel, and having considered the record evidence, the Court finds, as follows:

Summary judgment must be granted “if the pleadings and summary judgment evidence on file show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(a). At the summary judgment hearing, Defendant contends that the small height difference between one sidewalk panel and the next was open and obvious and not a dangerous condition, as a matter of law. Accordingly, Defendant did not breach any duty owed to the Plaintiff. See, e.g., *Durrah v. Bowling Breen Inn of Pensacola, LLC*, 3:20CV5234-TKW-EMT, 2021 WL 4120802 (N.D. Fla. Mar. 29, 2021).

As illustrated in the picture below, the Court finds that the condition of the sidewalk that Plaintiff tripped on was open and obvious and was not a dangerous condition as a matter of law. The Court further finds that Defendant did not breach any duty to Plaintiff. See *Kelley v. Sun Communities, Inc.*, 8:19-CV-1409-T-02AAS, 2021 WL 37595 (M.D. Fla. Jan. 5, 2021); *Durrah v. Bowling Breen Inn of Pensacola, LLC*, 3:20CV5234-TKW-EMT, 2021 WL 4120802 (N.D. Fla. Mar. 29, 2021); *Dent v. Fla. Dept. of Transp.*, 2022 WL 3593227 (Fla. Cir. Ct.).



There is no genuine dispute as to the fact that the Plaintiff tripped on the joint or seam running between the two panels of sidewalk, where one panel was elevated slightly as compared to the other, as depicted in this photograph above. Again, the Court finds the condition that Plaintiff tripped on was open and obvious and was not a dangerous condition.

It is **ORDERED AND ADJUDGED** that

1. Defendants' Motion for Summary Judgment is **GRANTED**;
2. A final judgment shall be entered in favor of the Defendant; and
3. Plaintiff, Wanda Owens, takes nothing by this action, and that Defendant City of Gainesville go hence without day.

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